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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional)  ATOMP004												
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>														
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Application Number</td> <td style="width: 33%;">Filed</td> </tr> <tr> <td>10773755</td> <td>Feb. 6, 2004</td> </tr> <tr> <td colspan="2">First Named Inventor</td> </tr> <tr> <td colspan="2">Brian Y. Lim</td> </tr> <tr> <td>Art Unit</td> <td>Examiner</td> </tr> <tr> <td>1791</td> <td>R.J. Kemmerle III</td> </tr> </table>			Application Number	Filed	10773755	Feb. 6, 2004	First Named Inventor		Brian Y. Lim		Art Unit	Examiner	1791	R.J. Kemmerle III
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<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p>														
<p>This request is being filed with a notice of appeal.</p>														
<p>The review is requested for the reason(s) stated on the attached sheet(s).        Note: No more than five (5) pages may be provided.</p>														
<p>I am the</p>														
<p><input type="checkbox"/> applicant/inventor. _____ /Melvin D. Chan/ _____        Signature _____</p>														
<p><input type="checkbox"/> assignee of record of the entire interest.        See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.        (Form PTO/SB/96) _____ /Melvin D. Chan/ _____        Typed or printed name _____</p>														
<p><input checked="" type="checkbox"/> attorney or agent of record. _____ 408-701-0035        Registration number _____ Telephone number _____</p>														
<p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. _____ July 24, 2009        Registration number if acting under 37 CFR 1.34 _____ Date _____</p>														
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.        Submit multiple forms if more than one signature is required, see below*.</p>														
<p><input type="checkbox"/> *Total of _____ forms are submitted.</p>														

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# United States Patent and Trademark Office

Application No.: 10/773,755

Confirmation No.: 4021

Customer No.: 51111

Docket No.: ATOMP004

Commissioner for Patents  
POB 1450  
Alexandria, VA 22313-1450

## Reasons for Pre-Appeal Brief Review Request

Dear Commissioner:

Applicants request a pre-appeal brief conference review because the rejections of record are clearly based on legal and factual error. The following is a summary of reasons, for which details can be found in the record at, among other places, pages 2-7 of the March 11, 2009 response.

### Claim 21

The examiner's section 102(b) rejection of claim 21 is improper as discussed on pages 2-4 of the response: Beshoory does not show or suggest "*a housing . . . the second end of the housing comprises no openings*," as recited in claim 21. Rather, tube 40 (figure 2) has openings at each end.

In the final office action, the examiner states that he:

[C]onsider[s] the entire system a 'housing' (tube plus bell jar).

Page 7.

The examiner has completely distorted Beshoory by disassembling it, cherry-picking *two different housings* (i.e., tube 40 and bell jar 21), and somehow joining them to make his own housing which bears no resemblance to Beshoory and cannot be used as Beshoory originally intended. This is not proper. The claim recites limitations for "a housing," i.e., *one* housing. With Beshoory, the examiner *attempts to read two housings as one housing*.

For at least this reason, claim 21 should be allowable.

Further, even accepting the examiner's housing the claim would still be allowable. The examiner's housing has openings at both ends. According to the examiner, the right end of his housing is made of bell jar 21. Bell jar 21 (figure 2) is shown in dashed lines to indicate it reflects prior art bell jar 10 (figure 1). Column 1, lines 65–68. Bell jar 21, like bell jar 10, has an opening at its right-most end so that an inert gas can pass from right to left and expel the treat gas through exit 44. Column 2, lines 57–60. The treat gas, along with reaction products and contaminants, are expelled so that they do not ruin later measurements. So, there is an opening at the right-most end of the examiner's housing.

For at least this additional reason, claim 21 should be allowable.

At page 7 in the office action, the examiner reasons that because Beshoory notes the inert gas can enter housing 20, this means there is no opening at the right-most end of bell jar 21. Yet, the examiner ignores the very reason why the gas is able to enter housing 20.

The gas can enter housing 20 *because there is an opening at the right-most end of bell jar 21*. The gas passes through bell jar 21, and enters housing 20 via an opening on a right side of the housing which opens into the bell jar. Other than this opening on the housing, there are no other openings for the gas to enter. Therefore, the gas must enter housing 20 through this opening. Since this opening opens into bell jar 21, the bell jar, in turn, must have an opening (i.e., the opening at its right-most end) for the gas.

For at least any one of these reasons, claim 21 should be allowable. Claims 42, 50, 63, 66, 70, 72, 76, and 78 should be allowable for at least similar reasons as claim 21. See section 4 of the March 11, 2009 response for details. Claims 22–25, 43–49, 51–58, 64–65, 68–69, 71, 73–75, 77, 79–88 should be allowable for at least being dependent upon allowable base claims. See sections 5.1–5.5.

### **Claims 69, 74, 80, and 85**

Additionally, dependent claims 69, 74, 80, and 85 recite "wherein the housing is made wholly of one material." The examiner, having construed "the entire system a 'housing'" to reject, for example, claim 21, now construes "housing" to "only . . . be the tube (40) of Beshoory" to reject claim 85. Pages 7–8 Final Office Action.

However, the "housing" recited in claim 85 refers to the "housing" recited in claim 21 as claim 85 is dependent on claim 21. Having construed "housing" to be one thing (i.e., "entire

system''), the examiner cannot now construe "housing" to be a different thing (i.e., "only . . . tube (40)") because the language of claim 85 makes clear that it recites a limitation of the housing element recited in claim 21.

For at least this reason, claims 69, 74, 80, and 85 should be allowable.

Applicants believe all pending claims are allowable.

Respectfully submitted,

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